

ASSEMBLY BILL

No. 2641

Introduced by Assembly Member Coto
(Coauthor: Senator Ducheny)

February 24, 2006

An act to amend Section 7003 of the Health and Safety Code, and to amend Section 5097.98 of the Public Resources Code, relating to cemeteries.

LEGISLATIVE COUNSEL'S DIGEST

AB 2641, as introduced, Coto. Native American grave sites.

Existing law provides a system for the regulation of cemeteries and defines a cemetery to include, among others, a place where 6 or more human bodies are buried. Violations of provisions relating to the protection of cemeteries is a crime.

This bill would include within the definition of a cemetery, a Native American burial ground, as defined, and would make conforming and technical, nonsubstantive changes. By expanding the definition of a cemetery and related crimes, this bill would impose a state-mandated local program.

Existing law establishes the Native American Heritage Commission and authorizes the commission to bring an action to prevent damage to Native American cemeteries or places of worship. Existing law, the California Native American Grave Protection and Repatriation Act of 2001 requires all state agencies and all museums that receive state funding to inventory Native American human remains and cultural items in their possession for return to the appropriate tribes.

This bill would require a landowner to consult with the most likely descendants, as determined by the commission regarding the

preservation of any Native American burial ground discovered on the property owner's land.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7003 of the Health and Safety Code is
2 amended to read:

3 7003. "Cemetery" means ~~either~~ any of the following:

4 (a) Any of the following that is used or intended to be used
5 and dedicated for cemetery purposes:

6 (1) A burial park, for earth interments.

7 (2) A mausoleum, for crypt or vault interments.

8 (3)A crematory and columbarium, for cinerary interments.

9 (b) A place where six or more human bodies are buried.

10 (c) *A Native American burial ground. For the purposes of this*
11 *section, "Native American burial ground" means a place*
12 *containing six or more Native American graves. For the*
13 *purposes of this section, a "Native American grave" means a*
14 *place whether originally below, on, or above the surface of the*
15 *earth including, but not limited to, a rock cairn or a pyre, where*
16 *human remains of a Native American, as identified pursuant to*
17 *subdivision (c) of Section 7050.5, were placed after death as part*
18 *of a death rite or ceremony of Native American culture.*

19 SEC. 2. Section 5097.98 of the Public Resources Code is
20 amended to read:

21 5097.98. (a) Whenever the commission receives notification
22 of a discovery of Native American human remains from a county
23 coroner pursuant to subdivision (c) of Section 7050.5 of the
24 Health and Safety Code, it shall immediately notify those persons
25 it believes to be most likely descended from the deceased Native
26 American. ~~The decedents~~ *descendants* may, with the permission
27 of the owner of the land, or his or her authorized representative,

1 inspect the site of the discovery of the Native American remains
2 and may recommend to the owner or the person responsible for
3 the excavation work means for ~~treating or disposing~~ *treatment or*
4 *disposition*, with appropriate dignity, *of* the human remains and
5 any associated grave goods. The descendants shall complete their
6 inspection and make their recommendation within 24 hours of
7 their notification by the Native American Heritage Commission.
8 The recommendation may include the ~~scientific removal and~~
9 nondestructive *removal and* analysis of human remains and items
10 associated with Native American burials.

11 (b) Whenever the commission is unable to identify a
12 descendent, or the descendent identified fails to make a
13 recommendation, or the landowner or his or her authorized
14 representative rejects the recommendation of the descendent and
15 the mediation provided for in subdivision (k) of Section 5097.94
16 fails to provide measures acceptable to the landowner, the
17 landowner or his or her authorized representative shall reinter the
18 human remains and items associated with Native American
19 burials with appropriate dignity on the property in a location not
20 subject to further subsurface disturbance.

21 (c) *The inadvertent discovery of a Native American burial*
22 *ground, as defined in subdivision (c) of Section 7003 of the*
23 *Health and Safety Code, is a significant unanticipated discovery*
24 *requiring additional consultation. The landowner or his or her*
25 *authorized representative shall consult with the most likely*
26 *descendent, as designated by the commission and shall address*
27 *every feasible option for the preservation of the cemetery, in situ,*
28 *including, but not limited to, any items associated with a Native*
29 *American grave.*

30 (d) Notwithstanding the provisions of Section 5097.9, ~~the~~
31 ~~provisions of~~ this section, including those actions taken by the
32 landowner or his or her authorized representative to implement
33 this section and any action taken to implement an agreement
34 developed pursuant to subdivision (l) of Section 5097.94, shall be
35 exempt from the requirements of the California Environmental
36 Quality Act (Division 13 (commencing with Section 21000)).

37 ~~(d)~~

38 (e) Notwithstanding ~~the provisions of~~ Section 30244, ~~the~~
39 ~~provisions of~~ this section, including those actions taken by the
40 landowner or his or her authorized representative to implement

1 this section, and any action taken to implement an agreement
2 developed pursuant to subdivision (l) of Section 5097.94, shall be
3 exempt from the requirements of the California Coastal Act of
4 1976 (Division 20 (commencing with Section 30000)).

5 SEC. 3. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the
10 penalty for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition of a
12 crime within the meaning of Section 6 of Article XIII B of the
13 California Constitution.